GOVERNMENT OF SARAWAK

v.

JENNY CATHERINE LIEW MAY LING & ORS

HIGH COURT SABAH & SARAWAK, MIRI
SULAIMAN DAUD JC
[CIVIL APPEAL NO: 12-24-99 (MR)]
29 SEPTEMBER 2001

CIVIL PROCEDURE: *Appeal - Appeal from order of registrar of subordinate court - Whether appeal lies to High Court - Subordinate Courts Rules 1980, O. 6, O. 24 r. 15*

CIVIL PROCEDURE: *Appeal - Record of appeal - Inclusion of photocopy of sealed order of registrar - Whether O. 49 r. 3A(1)(d) Subordinate Courts Rules 1980 complied with*

This was an appeal against the order for damages made by the registrar of the subordinate court ('the registrar'). The respondents raised a preliminary objection that the appeal was incompetent and fatally defective on the grounds that: (1) the High Court had no jurisdiction to hear an appeal against the order of the registrar as such an appeal only lies to a judge in chambers by virtue of O. 24 r. 15 of the Subordinate Courts Rules 1980 ('SCR'); and (2) that the record of appeal was not prepared in accordance with O. 49 r. 3A(1) SCR.

The appellant argued that O. 24 r. 15 SCR only applied to an appeal from the registrar's order made pursuant to proceedings in chambers. As the proceedings before the registrar was heard in open court, the registrar was in fact carrying out the functions and duties of a judge of the sessions court which the registrar was empowered to act by virtue of O. 6 SCR. It was argued therefore, that the order of the Registrar was appealable by virtue of ss. 27 and 28 of the Courts of Judicature Act 1964 ('CJA').

Held:

[1] It was clear from the wording of O. 24 r. 15(1) SCR that the judgment, order or decision of the registrar only lies to a judge in chambers notwithstanding whether the proceedings to which the appeal relates is heard in open court or in chambers. There is nothing in the heading of O. 24 which reads "Application and Proceedings in Chambers" to be construed as restricting the application of r. 15(1) to only the decision of the registrar made in chambers. The said heading is consistent with r. 15(1) in that it provides for the hearing of an appeal against the decision of the registrar to be made to and be heard by the judge in chambers.

Further, the appeal provisions under O. 49 SCR only apply to the decision of the sessions court or magistrate's court as reflected in Form 140 SCR. The definition of "court" in O. 6 SCR only includes a magistrate where he is empowered to act. The said definition can be distinguished from the definition of "judge" in the same order which includes both a magistrate and the registrar. (p 18 e-h)

[2] The marginal notes of O. 24 r. 15 SCR make reference to O. 56 r. 1 Rules of the High Court 1980 and it was decided by the Court of Appeal in *Gunasingam Ramasingam v. United Malayan Banking Corporation & Anor Appeal* that it had no jurisdiction to hear an appeal from the decision of the registrar of the High Court. (p 19 a-c)

[3] The appellate civil jurisdiction of the High Court only consist of hearing of appeals from the subordinate courts. As the present appeal related to the order made by the registrar of the subordinate court, who was not included in the definition of court under the SCR, it followed therefore that this court had no jurisdiction to entertain such an appeal. The proper procedure was for the appellant to appeal against the decision of the registrar to the judge in chambers under O. 24 r. 15 SCR. (pp 19 d & 20 b)

[4] The decision or orders of the registrar that was included in the appeal record was not a photocopy of the fair copy of the registrar's order but a photocopy of the sealed order of the registrar. Based on the case of *Dato' KK Sharma v. TAF Holdings Sdn Bhd*, the photocopy of a sealed order in the record of appeal was sufficient compliance with O. 49 r. 3A(1)(d) SCR unless the sealed copy was a forgery. (p 20 f)

[Appeal dismissed.]

Case(s) referred to:
Augustine & Anor v. Goh Siam Yong [1992] 1 SLR 767 ***(refd)***
Dato' KK Sharma v. TAF Holdings Sdn Bhd [1998] 1 CLJ 49 ***(foll)***
Gunasingam Ramasingam v. United Malayan Banking Corporation & Another Appeal [2001] 3 CLJ 942 ***(refd)***
Sii Toh Siong v. Hung Ming Chung [2000] 2 CLJ 48 ***(dist)***

Legislation referred to:
Courts of Judicature Act 1964, ss. 27, 28(1), 29
Rules of the High Court 1980, O. 56 r. 1
Subordinate Courts Rules 1980, O. 6, O. 24 r. 15(1), (5), O. 49 rr. 2(1), 3A(1)(d)

Subordinate Court Rules 1986 [Sing], O. 55 r. 1(5)

For the appellant - Thomas Akin Jelimin AG's Chambers
For the respondent - MS Sandhu; MS Sandhu & Co

Reported by Usha Thiagarajah

JUDGMENT

Sulaiman Daud JC:

This is an appeal by the 1st defendant ("the appellant") against the decision of the learned registrar of the subordinate court upon an assessment of damages pursuant to the court order made by consent on 26 October 1998. Before the hearing of the appeal Mr. M.S. Sandhu, the learned counsel for all the defendants ("the respondents"), upon prior notice in writing, raised preliminary objection that this appeal is incompetent and fatally defective.

To fully comprehend the facts of the case and the laws applicable thereto, it is necessary to trace the background of this case, culminating in the award of the damages to which this appeal relates. It is not disputed that during the trial of these consolidated suits, the learned sessions court judge ("SCJ"), by consent of the parties, entered interlocutory judgment against the Government of Sarawak and the Public Bank. It was further ordered that the assessment of damages be heard before the registrar of the subordinate court ("the registrar"). Pursuant thereto on 6 May 1999, the registrar proceeded to assess the quantum of damages against the appellant, Government of Sarawak. The hearing before the learned registrar was held in open court where witnesses were called to testify. The learned registrar delivered his judgment on 9 November 1999 in open court where he made the order for damages which is the subject matter of this appeal.

There are two grounds raised for the preliminary objection. Firstly the High Court has no jurisdiction to hear an appeal against the order made by the registrar. Secondly the appeal is not properly before the court as the Record of Appeal is not prepared in accordance with O. 49 r. 3A(1) of the Subordinate Courts Rules 1980 ("the SCR").

Whether High Court Conferred With Jurisdiction To Hear Appeal Against Order Made By The Registrar Of The Subordinate Court

The first ground of the objection raises a question concerning the jurisdiction of this court to hear an appeal against the order made by the registrar of the subordinate court. To answer the said question it will be necessary to firstly examine the various provisions relating to appeal from the decision of the subordinate court to the High Court.

Section 27 of the Courts of Judicature Act 1964 ("the CJA 1964") deals with the appellate civil jurisdiction of the High Court and it provides as follows:

> 27. The appellate civil jurisdiction of the High Court consists of the hearing of appeals from the subordinate courts as hereinafter provided.

Section 28(1) of the CJA 1964 prohibits such appeal where the amount in dispute or the value of the subject matter is ten thousand ringgit or less except on a question of law. Section 29 thereof provides that the appeal shall be by way of rehearing.

The procedure of appeal to the High Court from the decision of the subordinate court is governed by O. 49 of the SCR. Rule 2(1) thereof requires such appeal to be brought by giving notice of appeal in Form 140. An appeal also lies to a judge in chambers against the decision of the subordinate court made other than after trial. The notice thereof has to be given in Form 140, which in so far as relevant reads as follows:

Form 140
NOTICE OF APPEAL
(Heading)

> Take notice that ... being dissatisfied with the decision of the Sessions Magistrate Court at ... given on the ... day of ... , 19 ... appeals to the High Court against either/or the whole of the said decision such part of the said decision as decides that ... (sets out details).

The learned respondents' counsel submitted that O. 49 of the SCR which relates to an appeal from the subordinate court to the High Court does not apply to appeal from the decision given by the registrar of the subordinate court. He gave two grounds in support of his submission. Firstly he contended that reference to "court" or "subordinate court" in O. 49 of the SCR, and to "sessions court" or "magistrate court" in Form 140 thereof does not include the registrar of the subordinate court. Secondly he pointed out the procedure of appeal from the decision given by the registrar is specifically provided in O. 24 r. 15 of the SCR. It is the contention of the learned counsel that the procedure of appeal as provided in the said O. 24 r. 15 shall apply, whether the decision was made by way of proceedings in court or in chambers. The said order provides as follows:

> 15. (1) An appeal shall lie to a Judge in Chambers from any judgment, order or decision of the Registrar.
>
> (2) The appeal shall be brought by serving on every other party to the proceedings in which the judgment, order or decision was given a notice in Form 66 to attend before the Judge on a day specified in the notice.
>
> (3) Unless the Court otherwise orders, the notice must be filed within 7 days after the judgment, order or decision appealed against was given or made and served not less than 2 clear days before the day fixed for hearing the appeal.

(4) Except so far as the Court may otherwise direct, an appeal under this Rule shall not operate as a stay of the proceedings in which the appeal is brought.

(5) The decision of the Judge in Chambers shall be final.

Mr. Thomas Atkin Jelimin, for the Government of Sarawak, submitted that O. 24 r. 15 of the SCR as reproduced above only applies to an appeal against any judgment, order or decision of the registrar made pursuant to proceedings in chambers. He argued that such an interpretation is consistent with the heading of the said O. 24 which reads "Application and Proceedings in Chambers". The learned counsel also pointed out that the proceedings before the registrar in the present case was heard in open court and in so doing the registrar was in fact carrying out the functions and duties of the judge of the sessions court. In support of his argument he referred the court to the definition of "judge" in O. 6 of the SCR which includes "the registrar" in cases where he is empowered to act. For all the reasons stated he concluded that the order of the registrar in the instant case was in fact the order of the judge or that of the subordinate court, which under ss. 27 and 28 of the CJA 1964 is appealable to the High Court.

Having considered all the relevant provisions relating thereto, with respect I cannot agree with the submission by the learned appellant's counsel even though there is a very strong force in the submission. In my view it is clear from the wording of the said O. 24 r. 15(1) of the SCR that the judgment, order or decision of the registrar is only appealable to a judge in chambers notwithstanding whether the proceedings to which the appeal relates is heard in open court or in chambers. There is nothing in the heading of the said O. 24 which can be construed as restricting the application of r. 15(1) thereof to only the decision of the registrar made in chambers. I am also of the opinion that the said heading is consistent with the said r. 15(1) in that it provides for the hearing of an appeal against the decision of the registrar to be made to and be heard by the judge in chambers. I am also of the view that the provisions of appeal under O. 49 of the SCR only apply to the decision of the sessions court or magistrate court as reflected in Form 140 of the SCR. The definition of "court" in the said O. 6 of the SCR only includes a magistrate where he is empowered to act. The said definition can be distinguished from the definition of "judge" in the same order, which includes both a magistrate and the registrar. These facts further fortified my finding that this court has no jurisdiction to hear the present appeal which arise from the decision of the registrar of the subordinate court.

Further it is also to be noted that the marginal notes of the said O. 24 r. 15 of the SCR make reference to O. 56 r. 1 of the Rules of the High Court 1980 ("the RHC"), being its corresponding provisions therein. In *Gunasingam Ramasingam v. United Malayan Banking Corporation & Anor Appeal* [2001] 3 CLJ 942, one of the issues which arise for determination is whether the Court of Appeal has jurisdiction to hear an appeal against the order of the registrar of the High Court. In delivering the judgment of the Court of Appeal, Gopal Sri Ram JCA said at p. 944:

> There are two reasons for the dismissal. Firstly, the appellant is in essence seeking to appeal against an order from which no appeal lies to this court. We are only conferred with jurisdiction to hear appeals against order made by a High Court judge in his original and appellate jurisdiction. And there are restrictions upon that, for example under s. 68 of the Courts of Judicature Act 1964. Here is an attempt to appeal against the order of the registrar of the High Court. We plainly have no jurisdiction to entertain such appeal.

Similarly the appellate civil jurisdiction of the High Court only consists of hearing of appeals from the subordinate courts. As the present appeal relates to the order made by the registrar of the subordinate court, who is not included in the definition of court under the SCR, it is my finding that this court has no jurisdiction to entertain such appeal.

In passing it is worthy to note that the said O. 24 r. 15(5) provides for the finality of the decision of the judge in chambers in hearing an appeal against the decision of the registrar. The question is whether the said provisions preclude further appeal to the High Court. In the case of *Augustine & Anor v. Goh Siam Yong* [1992] 1 SLR 767, the Court of Appeal in Singapore was faced with the same question, ie, whether there is a right of appeal to the High Court upon the decision of the district judge in chambers under O. 55 r. 1(5) of the Subordinate Court Rules 1986 (Singapore). The said O. 55 r. 1(5) is in *pari materia* with O. 24 r. 15(5) of the SCR. In that case the respondent sued the appellant for damages in respect of a traffic accident and obtained interlocutory judgment in default of appearance for damages to be assessed. Damages were assessed by a deputy registrar of the subordinate court but the amount was subsequently reduced by a district judge in chambers. The respondent filed a notice of appeal to the High Court against the reduced assessment. The appellants applied to strike out the notice of appeal on the ground that by virtue of the said O. 55 r. 1(5), the respondent had no right of appeal. It was held that the right of appeal to the High Court is not a matter of jurisdiction of the subordinate courts but that of the High Court. The right of appeal is conferred by the Supreme Court of Judicature Act (Singapore) and not the Subordinate Court Act (Singapore) and that by reason thereof the said O. 55 r. 1(5) was held to be *ultra vires*.

Apart from the effect of the said O. 55 r. 1(5), it is to be noted from the facts of that case, the appeal from the decision of the registrar of the subordinate court in the assessment of damages was firstly appealed to the district judge-in-chambers before the notice of appeal was subsequently filed to the High Court. As an analogy, the proper procedure in the present case is for the appellant to appeal against the decision of the registrar herein to the judge in chambers under O. 24 of r. 15 of the SCR. Since no appeal lies to this court against the decision of the registrar, I will uphold the preliminary objection and dismissed this appeal on this ground alone. However for completeness I will next deal with the preliminary objection which relates to the filing of the record of appeal.

Whether The Record Of Appeal Is Defective

With regard to the second preliminary objection, the learned respondents' counsel submitted that the inclusion of photostate or unsealed copies of the orders does not constitute sufficient compliance with O. 49 r. 3A(1)(d) of the SCR 1980. The court was referred to *Sii Toh Siong v. Hung Ming Chung* [2000] 2 CLJ 48. In that case counsel for the respondent raised preliminary objection on the record of appeal filed by the appellant as it contained only a draft copy of the order of the learned magistrate and not the sealed order. The court upheld the preliminary objection and ruled that the filing of a photocopy of the fair copy of the order of the court appealed from was not in compliance with the rule.

However I agree with the learned appellant's counsel that the facts in *Sii Toh Siong*'s case can be distinguished with that of the present case. In the present case the decision or orders of the registrar that was included in the appeal record was not a photocopy of the fair copy of the order but a photocopy of the sealed order of the registrar. In *Dato' K.K. Sharma v. TAF Holdings Sdn. Bhd.* [1998] 1 CLJ 49, it was held that having a photocopy of a sealed order in the record of appeal is sufficient compliance with the requirement of O. 49 r. 3A of the SCR 1980 unless the sealed copy is a forgery. In delivering his judgment in that case Abdul Kadir Sulaiman J (as his Lordship then was) at p. 54 said:

> By O. 49 r. 3A(1) various documents are required for inclusion in the record of appeal. Section 3 of the Evidence Act 1950 defines "document" to mean any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of those means intended to be used or which may be used for the purpose of recording that matter, and by the illustration provided in the definition, words printed, lithographed or photographed are documents. Therefore, unless O. 49 r. 3A of the SCR expressly requires otherwise, the word "copies" therein can include photocopies of the original and in the case of a duplicate of a judgment or order, it may include a photocopy thereof.

I am in agreement with his Lordship on this issue. It is also my view that the incorporation of a photocopy of the sealed order of the registrar of the subordinate court by the appellant for the purpose of his record of appeal is sufficient compliance with O. 49 r. 3A(1)(d) of the SCR 1980.

The other reason given by the learned respondents' counsel why the record of appeal did not comply with the requirements of O. 49 r. 3A(1) SCR 1980 is the failure on the part of the appellant to include therein the bundle of documents marked AB1. In answer the learned appellant's counsel contended that the said bundle AB1 was never admitted as documentary exhibits in the course of the proceedings. Upon scrutiny of the notes of proceedings I am satisfied that there is nothing therein to show that such documents were ever admitted as exhibits.

Conclusion

In view of my earlier finding that this court has no jurisdiction to hear an appeal from the decision of the registrar of the subordinate court, I uphold the respondents' preliminary objection. Accordingly I dismissed the appeal with cost.